

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARIA CARDENAS BELTRAN

Claimant

VS.

IBP, INC.

Self-Insured Respondent

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Docket No. 157,372

ORDER

Claimant appealed Administrative Law Judge Pamela J. Fuller's Award dated October 15, 2002. Oral argument was presented to the Board on April 8, 2003. The Director of the Division of Workers Compensation appointed Jeffrey K. Cooper of Topeka, Kansas, to serve as Board Member Pro Tem in place of Gary M. Korte, who recused himself from this proceeding.

APPEARANCES

Robert A. Levy of Garden City, Kansas, appeared for the claimant. Wendel W. Wurst of Garden City, Kansas, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. At oral argument before the Board, the parties agreed the record also included the deposition of Blake C. Veenis, M.D., dated August 19, 2002.

ISSUES

The Administrative Law Judge (ALJ) determined claimant suffered a work-related injury on March 29, 1991, and awarded claimant an 8 percent permanent partial functional impairment to the body as a whole. The ALJ further determined claimant had failed to meet her burden of proof that her psychological condition was caused by her work-related injury. Lastly, the ALJ concluded claimant had failed to meet her burden of proof that she was entitled to temporary total disability benefits.

Claimant argues that the work-related injury made her psychological condition (somatizing disorder) symptomatic which, in turn, has rendered her permanently and totally

disabled from engaging in substantial gainful employment. Claimant further argues that she is entitled to temporary total disability benefits based upon the testimony of Dr. Craig A. Wamsley.

Respondent argues claimant has not met her burden of proof that her psychological condition is work-related. Respondent further argues the claimant's functional impairment should be limited to 2.4 percent because Dr. Blake C. Veenis attributed that percentage of his 8 percent functional impairment rating to claimant's physical injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The ALJ's Award contains a detailed recitation of the record and it is not necessary to repeat those facts herein. The Board adopts the findings of fact made by the ALJ that are not inconsistent with the findings and conclusions stated in this Order.

The claimant argues that her accident caused or aggravated her preexisting somatization disorder, a disorder that causes claimant to develop physical symptoms in response to emotions.

A preexisting mental condition is treated like any other health condition and if a work related accident aggravates, accelerates or intensifies the condition it is compensable under the Workers Compensation Act.¹ But a psychological injury is not compensable under Kansas law unless it is directly traceable to a work-related physical injury.²

Dr. Mitchel A. Woltersdorf, a clinical psychologist, concluded that claimant's physical accident did not trigger her psychological emotional response to come to the forefront and that claimant's somatizing disorder was not caused by nor a natural consequence of her work-related accident. He testified:

Q. Doctor, let me cut to the chase and make sure I understand it. She has this somatizing condition prior to the accident?

A. Yes.

Q. There are any number of variables that can cause this condition to manifest itself?

¹ *Boutwell v. Domino's Pizza*, 25 Kan. App. 2d 110, 959 P. 2d 469, rev. denied 265 Kan. 884 (1998).

² *Adamson v. Davis Moore Datsun, Inc.*, 19 Kan. App. 2d 301, 868 P.2d 546 (1994).

A. Yes.

Q. You cannot say with any reasonable medical or psychological certainty that her perceived accident or any physical injury she suffered caused the somatic condition to manifest itself, true?

A. That's correct.³

Dr. Veenis agreed with Dr. Woltersdorf's conclusion that claimant's accident did not cause her somatization to manifest itself. Dr. Veenis testified:

Q. Well, let me read you the question I asked him, Doctor. It's on page 49, lines 9 through 14. My question was: "You cannot say with any reasonable medical or psychological certainty that her perceived accident or any physical injury she suffered caused her somatic condition to manifest itself, true? And he said, "That's correct." Can you, Doctor, within any reasonable medical certainty say that any work related accident caused Ms. Cardenas' somatic condition to manifest itself?

A. Well, asked that way, that's exactly correct. I could not say that.⁴

The claimant has failed to meet her burden of proof that her psychological condition was directly traceable to her physical injury. Consequently, the Board affirms the ALJ's finding in this respect.

Respondent argued that claimant's functional impairment should be reduced to 2.4 percent because Dr. Veenis limited his overall impairment rating by noting that only 30 percent was attributable to her physical condition with the remainder related to her psychological condition.

Dr. Veenis concluded claimant suffered an 8 percent permanent partial functional impairment to the whole body. But he noted that the 8 percent impairment was a combination of the actual physical impairments magnified by her somatic condition. The doctor concluded that separating the physical from the psychological he would apportion claimant's impairment with 30 percent attributable to her physical injuries and the remaining 70 percent attributable to her psychological condition.⁵ Because claimant failed to establish that her psychological condition is directly traceable to her accident, she is limited to the functional impairment attributable to her physical injury. Consequently, the ALJ's Award is modified to reflect claimant is entitled to a 2.4 percent functional impairment and affirmed in all other respects.

³ Woltersdorf Depo. at 49.

⁴ Veenis Depo. at 38-39.

⁵ Veenis Depo. at 25-26.

AWARD

WHEREFORE, it is the finding of the Board that the Award of Administrative Law Judge Pamela J. Fuller's dated October 15, 2002, is modified to reflect claimant suffered a 2.4 percent functional impairment and affirmed in all other respects.

The claimant is entitled to 415 weeks of permanent partial compensation at the rate of \$4.24 or \$1,759.60 for a 2.4 percent functional whole body disability which is due, owing and ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

Dated this 29th day of August 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert A. Levy, Attorney for Claimant
Wendel W. Wurst, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director